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7 Attorneys for SHENNADOAH MAXWELL, on behalf of himself,
all others similarly situated, and on behalf of the general public.
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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SHENNADOAH MAXWELL, on behalf
of himself, all others similarly situated,
12 and on behalf of the general public,

13 Plaintiffs,

14 v.

15 MCLANE SUNEAST, INC.; and DOES
16 1-100,
17 Defendants.
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Case No. 2:17-cv-550 PA-AS

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay Overtime;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order Nos. 9-1998, 9-2000, 9-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 4) Failure to Authorize and Permit Paid Rest Periods (Lab. Code § 226.7; IWC Wage Order Nos. 9-1998, 9-2000, 9-2001(12); Cal. Code Regs. Title 8 § 11090);
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 226.2 1174, 1175);
- 6) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);
- 7) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11090(8));
- 8) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff SHENNADOAH MAXWELL on behalf of himself, all others similarly situated,
2 and on behalf of the general public, complains of Defendant and/or DOES and for causes of
3 action and alleges:

- 4 1. This is a class action pursuant to California Code of Civil Procedure section 382 on
5 behalf of Plaintiff, SHENNADOAH MAXWELL and all non-exempt, truck workers,
6 truck drivers, drivers, or similar job designations who are/were paid on a piece-rate basis
7 and who are presently or formerly employed by MCLANE SUNEAST, INC. and/or its
8 subsidiaries or affiliated companies and/or predecessors and/or DOES, within the State of
9 California.
- 10 2. At all times mentioned herein, MCLANE SUNEAST, INC. owns and operates trucks,
11 industrial trucks, industrial vehicles, and/or industrial work sites. At all times during the
12 liability period, MCLANE SUNEAST, INC. and/or DOES have conducted business in
13 Alameda County and elsewhere within California.
- 14 3. At all times mentioned herein, MCLANE SUNEAST, INC. and/or subsidiaries or
15 affiliated companies and/or DOES, within the State of California, have, among other
16 things, employed current and former Non-Exempt Employees with job titles including,
17 truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
18 and/or industrial workers (hereinafter "Non-Exempt Employees").
- 19 4. At all times mentioned herein, MCLANE SUNEAST, INC. has had the ability to hire and
20 fire employees at MCLANE SUNEAST, INC.
- 21 5. At all times mentioned herein, MCLANE SUNEAST, INC. has, directly or indirectly,
22 employed or exercised control over the wages, hours, or working conditions of Non-
23 Exempt Employees at MCLANE SUNEAST, INC.
- 24 6. At all times mentioned herein, MCLANE SUNEAST, INC. has had common policies and
25 practices that controlled and affected Non-Exempt Employees at MCLANE SUNEAST,
26 INC.
- 27 7. At all times mentioned herein, the common policies and practices of MCLANE
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1 SUNEAST, INC. and/or DOES were a direct cause of Defendant's failure to comply with
2 California's wage and hours laws, Wage Orders, and/or the California Labor Code, as set
3 forth more fully within.

4 8. For at least four years prior to the filing of this action and through to the present,
5 MCLANE SUNEAST, INC. and/or DOES have had a consistent policy of failing to
6 compensate Non-Exempt Employees within the State of California, including Plaintiff,
7 for all hours worked and all miles driven, per Defendant's piece-rate pay plan.

8 9. For at least four years prior to the filing of this action and through to the present,
9 Defendant MCLANE SUNEAST, INC. and/or DOES have had a consistent policy and/or
10 practice of failing to provide all straight time and overtime wages owed to Non-Exempt
11 Employees, as mandated under the *California Labor Code* and the implementing rules
12 and regulations of the Industrial Welfare Commission's ("IWC") California Wage
13 Orders.

14 10. For at least four years prior to the filing of this action and through to the present,
15 Defendant MCLANE SUNEAST, INC. and/or DOES have had a consistent policy of
16 requiring Non-Exempt Employees within the State of California, including Plaintiff, to
17 work through meal periods and work at least five (5) hours without a meal period and
18 failing to pay such employees one (1) hour of pay at the employees' regular rate of
19 compensation for each workday that the meal period is not provided, or other
20 compensation, as required by California's state wage and hour laws, and automatically
21 deducting a half hours pay from their wages.

22 11. For at least four years prior to filing of this action and through the present, Defendant
23 MCLANE SUNEAST, INC. and/or DOES did not have a policy of allowing Plaintiff and
24 the proposed class working shifts of ten (10) or more hours in a day to take a second meal
25 period of not less than thirty (30) minutes as required by the applicable Wage Order of
26 the IWC.

27 12. For at least four years prior to the filing of this action and through to the present,
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1 Defendant MCLANE SUNEAST, INC. and/or DOES have had a consistent policy of
2 requiring Non-Exempt Employees within the State of California, including Plaintiff, to
3 work over ten (10) hours without providing an additional, uninterrupted meal period of
4 thirty (30) minutes and failing to pay such employees one (1) hour of pay at the
5 employees' regular rate of compensation for each workday that the meal period is not
6 provided, or other compensation, as required by California's state wage and hour laws.

7 13. For at least four years prior to the filing of this action and through to the present,
8 Defendant MCLANE SUNEAST, INC. and/or DOES have had a consistent policy and/or
9 practice of requiring its Non-Exempt Employees within the State of California, including
10 Plaintiff, to work for over four hours, or a major fraction thereof, without a paid 10
11 minute rest period, and failing to pay such employees one (1) hour of pay at the
12 employees' regular rate of compensation for each workday that the rest period is not
13 provide, or other compensation, as required by California's state wage and hour laws.

14 14. For at least four years prior to the filing of this action and through to the present,
15 Defendant MCLANE SUNEAST, INC. and/or DOES and/or their officers and/or
16 managing agents have had a consistent policy and/or practice of willfully failing to
17 provide to Plaintiff and its Non-Exempt Employees, accurate itemized employee wage
18 statements.

19 15. For at least four years prior to the filing of this action and through to the present,
20 Defendant MCLANE SUNEAST, INC. and/or DOES and/or their officers and/or
21 managing agents have had a consistent policy and/or practice of willfully failing to timely
22 pay wages owed to Plaintiff and those Non-Exempt Employees who left Defendant
23 MCLANE SUNEAST, INC. and/or DOES' employ or who were terminated.

24 16. For at least four years prior to the filing of this action and through to the present,
25 Defendant MCLANE SUNEAST, INC. and/or DOES, by failing to lawfully pay Non-
26 Exempt Employees, including Plaintiff and those similarly situated, all the wages they are
27 owed, failing to reimburse and/or indemnify business expenses, failing to provide meal
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- 1 and rest periods, engaged in false, unfair, fraudulent and deceptive business practices
2 within the meaning of the *Business and Professions Code* section 17200, et seq.
- 3 17. For at least four years prior to the filing of this action and through to the present,
4 MCLANE SUNEAST, INC. and/or DOES, by failing to lawfully pay Plaintiff and those
5 similarly situated all the wages they are owed, engaged in false, unfair, fraudulent and
6 deceptive business practices within the meaning of the *Business and Professions Code*
7 section 17200, et seq.
- 8 18. MCLANE SUNEAST, INC. and/or DOES' business is staffed, *inter alia*, by employees
9 that are truck workers, industrial truck workers, industrial truck drivers, industrial vehicle
10 drivers, industrial workers, and/or any similar job designation or title who are/were paid
11 on a piece-rate basis, employed by Defendant in Alameda County and throughout the
12 State of California.
- 13 19. Throughout the statutory period, Plaintiff and similarly situated Non-Exempt Employees
14 were employed by Defendant MCLANE SUNEAST, INC. and/or DOES as industrial
15 truck workers, industrial vehicle workers, and/or industrial workers and/or other
16 employees with similar job titles or designations who were paid on a piece-rate basis.
- 17 20. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES' employees,
18 including Plaintiff and similarly situated Non-Exempt Employees, were not provided all
19 straight time and overtime wages owed, meal periods and rest periods, or compensation
20 in lieu thereof, as mandated under the *California Labor Code*, and the implementing rules
21 and regulations of the Industrial Welfare Commissions ("IWC") California Wage Orders.
- 22 21. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES' employees,
23 including Plaintiff and similarly situated Non-Exempt Employees were not provided with
24 accurate and itemized employee wage statements.
- 25 22. MCLANE SUNEAST, INC. and/or DOES failed to comply with Labor Code section
26 226, subdivision (a) by failing to specify required items in Plaintiff' and members of the
27 proposed class' wage statements, such as accurately reporting total hours worked by
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1 Plaintiff and members of the proposed class. Plaintiff and members of the proposed class
2 are entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code
3 section 226(b).

4 23. MCLANE SUNEAST, INC. and/or DOES failed to comply with Labor Code section
5 226.2, subdivision (a), by failing to specify the total hours of compensable rest and
6 recovery periods, and the total hours of “nonproductive time.” Plaintiff and members of
7 the proposed class are entitled to penalties not to exceed \$4,000 for each employee
8 pursuant to Labor Code section 226(b).

9 24. MCLANE SUNEAST, INC. and/or DOES have failed to comply with IWC Wage Order
10 9-2001(7) by failing to maintain time records showing hourly compensation, when the
11 employee begins and ends each work day and total daily hours worked by itemizing in
12 wage statements and accurately reporting total hours worked by Plaintiff and members of
13 the proposed class.

14 25. MCLANE SUNEAST, INC. and/or DOES’ failure to retain accurate records of total
15 hours worked by Plaintiff and the proposed class was willful and deliberate, was a
16 continuous breach of MCLANE SUNEAST, INC. and/or DOES’ duty owed to Plaintiff
17 and the proposed class.

18 26. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES’ employees,
19 including Plaintiff and similarly situated Non-Exempt Employees, were not timely paid
20 all wages owed to them at the time of termination.

21 27. Defendant MCLANE SUNEAST, INC. and/or DOES are and were aware that Plaintiff
22 and members of the proposed Plaintiff Class were not paid all straight time and overtime
23 wages owed, nor provided meal and rest periods. Defendant and/or DOES’ denial of
24 wages and other compensation due to Plaintiff and members of the proposed Plaintiff
25 class was willful and deliberate.

26 28. Defendant MCLANE SUNEAST, INC. and/or DOES each and collectively controlled the
27 wages, hours, and working conditions of Plaintiff and the Class they seek to represent,
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creating a joint-employer relationship over Plaintiff and the Class they seek to represent.

29. Plaintiff SHENNADOAH MAXWELL on behalf of himself and all of MCLANE SUNEAST, INC. and/or DOES' Non-Exempt Employees, bring this action pursuant to *California Labor Code* sections 226, subd. (b), 226.7, 510, 512, 558, 1194, and *California Code of Regulations*, Title 8, section 11090, seeking unpaid wages, overtime, unpaid reimbursement for business expenses, meal and rest period compensation, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

30. Plaintiff SHENNADOAH MAXWELL on behalf of himself and all putative Class Members MCLANE SUNEAST, INC. and/or DOES' Non-Exempt Employees, pursuant to *California Business and Professions Code* sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits MCLANE SUNEAST, INC. and/or DOES enjoyed from their failure to pay all straight time wages, overtime wages, and meal and rest period compensation.

I. VENUE

31. Defendant MCLANE SUNEAST, INC. and/or DOES removed this case to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1441 and 1446 on the grounds that federal jurisdiction exists under the Class Action Fairness Act of 2004, codified in part at 28 U.S.C. § 1332(d).

32. On January 23, 2017, this case was transferred to the United States District Court for the Central District of California.

33. Venue as to Defendant, MCLANE SUNEAST, INC. and/or DOES is proper in this judicial district. Defendant MCLANE SUNEAST, INC. and/or DOES conduct business and commit Labor Code violations within San Bernardino County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within San Bernardino County. Defendant MCLANE SUNEAST, INC. and/or DOES employ numerous Class Members who work in San Bernardino

County, in California.

II. PARTIES

A. Plaintiff.

34. At all relevant times herein, Plaintiff SHENNADOAH MAXWELL is and was a resident of California. At all relevant times herein, he was employed by Defendant MCLANE SUNEAST, INC. and/or DOES within the last four years as a non-exempt truck worker, industrial truck worker, industrial truck driver, industrial vehicle driver, industrial worker and/or any similar job designation who was paid on a piece-rate basis at MCLANE SUNEAST, INC. and/or DOES in California. Throughout his employment with MCLANE SUNEAST, INC. and/or DOES, SHENNADOAH MAXWELL was employed as a non-exempt truck worker, industrial truck worker, industrial truck driver, industrial vehicle driver, industrial worker, and/or any similar job designation.

35. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' common company policies of failing to pay all straight time and overtime wages owed.

36. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' common company policies of illegally failing to pay for all hours worked.

37. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' common policies and/or practices of failing to pay all straight time and overtime wages owed, auto-meal deduct, and providing no meal periods to employees working at least five (5) hours or any additional meal periods for working in excess of ten (10) hours, or compensation in lieu thereof.

38. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC./or DOES' common company policies of failing to provide paid ten (10) minute paid rest breaks to employees whom

worked four (4) hours or major fraction thereof.

39. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' common company policies of failing to provide Non-Exempt Employees with accurate itemized wage statements. On information and belief, Defendant and/or DOES' failure to provide to their Non-Exempt Employees, including Plaintiff, with accurate itemized wage statements was willful.

40. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' common company policies of failing to timely compensate Non-Exempt Employees all wages owed upon termination. On information and belief, Defendant and/or DOES' failure to pay Non-Exempt Employees, including Plaintiff, in a timely manner, compensation owed to them upon termination of their employment with MCLANE SUNEAST, INC. and/or DOES was willful.

41. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendant MCLANE SUNEAST, INC. and/or DOES' fraudulent and deceptive business practices within the meaning of the Business and Professions Code section 17200, *et seq.*

42. Plaintiff and the proposed class they seek to represent are covered by, inter alia, California IWC Occupational Wage Order Nos. 9-1998, 9-2000, and 9-2001, and Title 8, California Code of Regulations, §11090.

B. Defendant.

43. MCLANE SUNEAST, INC. and/or DOES own and operate trucks, industrial trucks, industrial vehicles, and/or industrial work sites, and, at all times during the liability period, have conducted business in San Bernardino County and elsewhere within California. At these work sites and throughout California, Defendant MCLANE SUNEAST, INC. and/or DOES have, among other things, employed persons as truck

workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar job designations who have been paid on a piece-rate basis.

44. MCLANE SUNEAST, INC. and/or DOES employed Plaintiff and members of the proposed Class throughout the statutory liability period as non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar job designations who are/were paid on a piece-rate basis. On information and belief MCLANE SUNEAST, INC. and/or DOES employed Plaintiff and members of the proposed Class on a piece-rate basis within California. On information and belief, MCLANE SUNEAST, INC. and/or DOES exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class.

45. MCLANE SUNEAST, INC. and/or DOES' principal place of business is in the State of California. MCLANE SUNEAST, INC. and/or DOES have numerous office and/or contacts in the State of California. California is the nerve center of MCLANE SUNEAST, INC.'s and/or DOES' operations.

46. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendant DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues this Defendant by such fictitious names under Code of Civil Procedure section 474. Plaintiff are informed and believes, and based thereon alleges, that each of the Defendant designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendant designated hereinafter as DOES when such identities become known.

47. Plaintiff are informed and believe, and based thereon allege, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendant and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent

1 hereto, and the acts of each Defendant and/or DOE are legally attributable to the other
2 Defendant and/or DOES.

3 **III. CLASS ACTION ALLEGATIONS**

4 48. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
5 action pursuant to section 382 of the California Code of Civil Procedure and Rule 23 of
6 the Federal Rules of Civil Procedure. Plaintiff seeks to represent a Class composed of and
7 defined as follows:

8 All persons who are employed or have been employed by
9 Defendant in the State of California as Non-Exempt truck workers,
10 industrial truck workers, industrial truck drivers, industrial vehicle
11 drivers, industrial workers, and/or other similar job designations
12 and titles who are/were paid on a piece-rate basis during the period
13 of the relevant statute of limitations.

14 Plaintiff also seeks to represent a Subclass composed of and defined as follows:

15 All persons who are or have been employed by MCLANE
16 SUNEAST, INC. and/or DOES in the State of California as truck
17 workers, industrial truck workers, industrial truck drivers,
18 industrial vehicle drivers, industrial workers, and/or other similar
19 job designations and titles who are/were paid on a piece-rate basis
20 during the period of the relevant statute of limitations, who worked
21 one or more shifts in excess of 5 hours.

22 All persons who are or have been employed by MCLANE
23 SUNEAST, INC. and/or DOES in the State of California as truck
24 workers, industrial truck workers, industrial truck drivers,
25 industrial vehicle drivers, industrial workers, and/or other similar
26 job designations and titles who are/were paid on a piece-rate basis
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1 during the period of the relevant statute of limitations, who worked
2 one or more shifts in excess of 6 hours.

3
4 All persons who are or have been employed by MCLANE
5 SUNEAST, INC. and/or DOES in the State of California as truck
6 workers, industrial truck workers, industrial truck drivers,
7 industrial vehicle drivers, industrial workers, and/or other similar
8 job designations and titles who are/were paid on a piece-rate basis
9 during the period of the relevant statute of limitations, who worked
10 one or more shifts in excess of 10 hours.

11
12 All persons who are or have been employed by MCLANE
13 SUNEAST, INC. and/or DOES in the State of California as truck
14 workers, industrial truck workers, industrial truck drivers,
15 industrial vehicle drivers, industrial workers, and/or other similar
16 job designations and titles who are/were paid on a piece-rate basis
17 during the period of the relevant statute of limitations, who worked
18 one or more shifts in excess of 12 hours.

19
20 All persons who are or have been employed by MCLANE
21 SUNEAST, INC. and/or DOES in the State of California as truck
22 workers, industrial truck workers, industrial truck drivers,
23 industrial vehicle drivers, industrial workers, and/or other similar
24 job designations and titles who are/were paid on a piece-rate basis
25 during the period of the relevant statute of limitations, who worked
26 one or more shifts in excess of 3 hour and one-half hours, but less
27 than or equal to 6 hours.
28

1 All persons who are or have been employed by MCLANE
2 SUNEAST, INC. and/or DOES in the State of California as truck
3 workers, industrial truck workers, industrial truck drivers,
4 industrial vehicle drivers, industrial workers, and/or other similar
5 job designations and titles who are/were paid on a piece-rate basis
6 during the period of the relevant statute of limitations, who worked
7 one or more shifts in excess of 6 hours, but less than or equal to 10
8 hours.
9

10 All persons who are or have been employed by MCLANE
11 SUNEAST, INC. and/or DOES in the State of California as truck
12 workers, industrial truck workers, industrial truck drivers,
13 industrial vehicle drivers, industrial workers, and/or other similar
14 job designations and titles who are/were paid on a piece-rate basis
15 during the period of the relevant statute of limitations, who worked
16 one or more shifts in excess of 10 hours.
17

18 All persons who are or have been employed by MCLANE
19 SUNEAST, INC. and/or DOES in the State of California as truck
20 workers, industrial truck workers, industrial truck drivers,
21 industrial vehicle drivers, industrial workers, and/or other similar
22 job designations and titles who are/were paid on a piece-rate basis
23 during the period of the relevant statute of limitations, who
24 separated their employment from Defendant.
25
26

27 All persons who are or have been employed by MCLANE
28 SUNEAST, INC. and/or DOES in the State of California as truck

workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar job designations and titles who are/were paid on a piece-rate basis during the period of the relevant statute of limitations, who worked one or more shifts in which they received a wage statement for the corresponding pay period.

All persons who are or have been employed by MCLANE SUNEAST, INC. and/or DOES in the State of California as truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar job designations and titles during the period of the relevant statute of limitations, who were not reimbursed and/or indemnified for expenses in direct consequence of the discharge of their work duties.

49. Plaintiff reserve the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

50. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure and Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

51. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff are informed and believe that MCLANE SUNEAST, INC. and/or DOES currently employ, and during the liability period

1 employed, over fifty employees, all in the State of California, in positions as MCLANE
2 SUNEAST, INC. and/or DOES' Non-Exempt Employees that are truck workers,
3 industrial truck workers, industrial truck drivers, industrial vehicle drivers, industrial
4 workers, and/or other similar job designations and titles in San Bernardino County and
5 dispersed throughout California during the liability period and who are or have been
6 affected by MCLANE SUNEAST, INC. and/or DOES' policies of wage theft, failure to
7 pay all straight and overtime wages owed, failure to provide meal and/or rest periods
8 without the appropriate legal compensation, willful failure to pay all wages due at time of
9 separation from employment, failure to timely pay waiting time monies, and knowing and
10 intentional failure to provide accurate and itemized employee wage statements.

11 52. Accounting for employee turnover during the relevant periods increases this number
12 substantially. Upon information and belief, Plaintiff alleges MCLANE SUNEAST, INC.
13 and/or DOES' employment records would provide information as to the number and
14 location of all Class Members. Joinder of all members of the proposed Class is not
15 practicable.

16
17 **B. Commonality.**

18 53. There are questions of law and fact common to the Class that predominate over any
19 questions affecting only individual Class Members. These common questions of law and
20 fact include, without limitation:

21 (1) Whether MCLANE SUNEAST, INC. and/or DOES
22 violated the *Labor Code* and/or applicable IWC Wage Orders in failing to
23 pay employees all earned wages at the regular rate for all hours worked.

24 (2) Whether MCLANE SUNEAST, INC. and/or DOES
25 violated *Labor Code* section 226.7, IWC Wage Order No. 9-2001 or other
26 applicable IWC Wage Orders, and California Code of Regulations, Title 8,
27 section 11090, by failing to authorize, permit, and/or provide paid rest
28 periods to employees for every four (4) hours or major fraction thereof

1 worked and/or failing to pay said employees one (1) hour of pay at the
2 employee's regular rate of compensation for each work day that the rest
3 period was not authorized, permitted and/or provided.

4 (3) Whether MCLANE SUNEAST, INC. and/or DOES
5 violated *Labor Code* sections 226, 1174, 1175 and IWC Wage Order No.
6 9-2001 subsections (7)(a), (7)(b), (7)(c) by knowingly, intentionally, and
7 willfully failing to, among other things, accurately report compensation
8 owed for rest period violations.

9 (4) Whether MCLANE SUNEAST, INC. and/or DOES
10 willfully failed to pay, in a timely manner, wages owed to members of the
11 proposed Class who left MCLANE SUNEAST, INC. and/or DOES'
12 employ or who were terminated.

13 (5) Whether MCLANE SUNEAST, INC. and/or DOES
14 violated *Labor Code* section 203, which provides for the assessment of a
15 penalty against the employer, by willfully failing to timely pay all wages
16 owed to employees who left MCLANE SUNEAST, INC. and/or DOES'
17 employ or who were terminated.

18 (6) Whether MCLANE SUNEAST, INC. and/or DOES
19 violated section 17200, et seq. of the *California Business and Professions*
20 *Code* by failing to pay all straight and overtime wages owed, failing to
21 provide rest periods without compensating proposed Class Members one
22 (1) hour's pay for every day such periods were not provided, failing to pay
23 all wages due upon termination of employment, and failing to keep
24 accurate records of Class Members' compensation owed.

25 (7) Whether MCLANE SUNEAST, INC. and/or DOES had
26 uniform policies and/or practices of failing to pay employees all earned
27 wages at the regular rate for all hours worked.
28

1 (8) Whether MCLANE SUNEAST, INC. and/or DOES had
2 uniform policies and/or practices of failing to authorize, permit, and/or
3 provide paid rest periods to employees for every four (4) hours or major
4 fraction thereof worked and/or failing to pay said employees one (1) hour
5 of pay at the employee's regular rate of compensation for each work day
6 that the rest period was not authorized, permitted and/or provided.

7 (9) Whether MCLANE SUNEAST, INC. and/or DOES had
8 uniform policies and/or practices of failing to provide employees accurate
9 and itemized wage statements.

10 (10) Whether MCLANE SUNEAST, INC. and/or DOES had
11 uniform policies and/or practices of failing to timely pay all wages owed
12 to employees who left MCLANE SUNEAST, INC. and/or DOES' employ
13 or who were terminated.

14 (11) Whether MCLANE SUNEAST, INC. and/or DOES'
15 uniform policies violate Wage Order No. 9-2001 and *Labor Code* section
16 226.7.

17 (12) Whether MCLANE SUNEAST, INC. and/or DOES
18 wrongly converted Plaintiff' and proposed Class members' wages and/or
19 monies to their own use.

20 (13) Whether MCLANE SUNEAST, INC. and/or DOES
21 fraudulently represented to Plaintiff and members of the proposed Class
22 that all wages would be paid in order to induce Plaintiff and the Class they
23 seek to represent into believing all wages would be paid and to induce
24 Plaintiff and the Class they seek to represent to work for longer hours.

25 (14) Whether MCLANE SUNEAST, INC. and/or DOES have
26 been unjustly enriched by wrongfully and unlawfully failing to pay
27 Plaintiff and members of the proposed Class wages they are owed.
28

1 (15) Whether MCLANE SUNEAST, INC. and/or DOES
2 violated Cal. Code Regs. tit. 8, § 11090, subds. 11(B) by not providing
3 second meal periods to Plaintiff and members of the proposed Class.

4 (16) Whether MCLANE SUNEAST, INC. and/or DOES
5 violated *Labor Code* sections 226.7 and 512, IWC Wage Order No. 9-
6 2001 or other applicable IWC Wage Orders and California Code of
7 Regulations, Title 8, section 11090, by failing to provide meal periods to
8 Non-Exempt Employees per every (5) hours of continuous work and/or
9 failing to pay said employees one hour of pay at the employee's regular
10 rate of compensation for each work day that the meal period was not
11 provided.

12 (17) Whether MCLANE SUNEAST, INC. and/or DOES'
13 uniform policies of establishing and scheduling routes to be completed in
14 overly demanding time frames resulted in MCLANE SUNEAST, INC.
15 and/or DOES not providing meal and rest breaks, in that said policies
16 pressured its Non-Exempt Employees to complete their routes and/or
17 assigned tasks within rigorous time frames and not take meal and rest
18 breaks and/or not legally provide meal periods.

19 (18) Whether MCLANE SUNEAST, INC. and/or DOES'
20 uniform policies of establishing and scheduling routes and/or assigning
21 tasks to be completed in overly demanding time frames resulted in
22 MCLANE SUNEAST, INC. and/or DOES pressuring its Non-Exempt
23 Employees to complete their routes and/or tasks within the rigorous time
24 frames and not take meal breaks.

25 (19) Whether MCLANE SUNEAST, INC. and/or DOES'
26 uniform policies of establishing and scheduling routes and/or assigning
27 tasks to be completed in overly demanding time frames resulted in
28

1 MCLANE SUNEAST, INC. and/or DOES discouraging its Non-Exempt
2 Employees from taking meal periods.

3 (20) Whether MCLANE SUNEAST, INC. and/or DOES' uniform
4 policies of establishing and scheduling routes and/or assigning tasks to be
5 completed in overly demanding time frames resulted in MCLANE
6 SUNEAST, INC. and/or DOES impeding its Non-Exempt Employees
7 from taking meal periods.

8 (20) Whether MCLANE SUNEAST, INC. and/or DOES'
9 uniform policies of establishing and scheduling routes and/or assigning
10 tasks to be completed in overly demanding time frames resulted in
11 MCLANE SUNEAST, INC. and/or DOES pressuring its Non-Exempt
12 Employees to forego taking meal periods.

13 (21) Whether MCLANE SUNEAST, INC. and/or DOES had a
14 pattern and practice of pressuring its Non-Exempt Employees to complete
15 routes and/or assigned tasks within time frames that made it impractical
16 for Non-Exempt Employees to be relieved of all duties for thirty (30)
17 minute meal periods and/or ten (10) minute rest breaks.

18 (22) Whether MCLANE SUNEAST, INC. and/or DOES had a
19 uniform policy of failing to pay Non-Exempt Employees for all straight
20 and overtime wages owed.

21 (23) Whether MCLANE SUNEAST, INC. and/or DOES
22 violated *Labor Code* sections 510, 1194, and other provisions by shaving
23 time and failing to pay all straight time and overtime wages owed.

24 (24) Whether MCLANE SUNEAST, INC. and/or DOES had
25 uniform policies and/or practices of failing to reimburse or indemnify
26 employees for business expenses incurred as a consequence of the
27 discharge of their work duties.
28

1 54. The answer to each of these respective questions will generate a common answer capable
2 of resolving class-wide liability in one stroke.

3 55. Each of said respective work practices and/or policies were uniform throughout all of
4 MCLANE SUNEAST, INC. and/or DOES' California locations during the class period.

5 56. Said common questions predominate over any individualized issues and/or questions
6 affecting only individual members.

7 **C. Typicality.**

8 57. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff
9 and all members of the proposed Class sustained injuries and damages arising out of and
10 caused by MCLANE SUNEAST, INC. and/or DOES' common course of conduct in
11 violation of laws and regulations that have the force and effect of law and statutes as
12 alleged.

13 58. Plaintiff SHENNADOAH MAXWELL was subjected to the same uniform policies
14 and/or practices that affected all such employees.

15 59. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES' uniform
16 policies and/or practices resulted in said employees not being compensated for all straight
17 time and overtime wages.

18 60. As a result of MCLANE SUNEAST, INC. and/or DOES' uniform policies and/or
19 practices of not paying all wages, Plaintiff and said truck workers, industrial truck
20 workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or
21 other similar job designations and titles who are/were paid on a piece-rate basis were not
22 paid the wages owed to them. Thus, Plaintiff and truck workers, industrial truck workers,
23 industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar
24 job designations and titles who are/were paid on a piece-rate basis are owed their earned
25 wages.

26 61. Throughout the statutory periods, MCLANE SUNEAST, INC. and/or DOES had uniform
27 policies of pressuring Plaintiff and truck workers, industrial truck workers, industrial
28

1 truck drivers, industrial vehicle drivers, industrial workers, and/or other similar job
2 designations and titles who are/were paid on a piece-rate basis to not take meal and/or
3 rest breaks.

4 62. As a result of said uniform policies and/or practices of pressure, Plaintiff and truck
5 workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
6 industrial workers, and/or other similar job designations and titles who are/were paid on a
7 piece-rate basis regularly did not take meal and/or rest periods and/or worked during
8 meal and/or rest periods.

9 63. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
10 policies and/or practices of discouraging Plaintiff and truck workers, industrial truck
11 workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or
12 other similar job designations and titles who are/were paid on a piece-rate basis from
13 taking meal and/or rest periods.

14 64. As a result of said uniform policies and/or practices of discouragement, Plaintiff and
15 truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
16 industrial workers, and/or other similar job designations and titles who are/were paid on a
17 piece-rate basis regularly did not take meal and/or rest periods and/or worked during
18 meal and/or rest periods.

19 65. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
20 policies and/or practices encouraging Plaintiff and truck workers, industrial truck
21 workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or
22 other similar job designations and titles who are/were paid on a piece-rate basis of
23 working during meal and/or rest periods.

24 66. As a result of said uniform policies and/or practices of encouraging Plaintiff and said
25 truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
26 industrial workers, and/or other similar job designations and titles to work during rest
27 periods, Plaintiff and truck workers, industrial truck workers, industrial truck drivers,
28

1 industrial vehicle drivers, industrial workers, and/or other similar job designations and
2 titles who are/were paid on a piece-rate basis did not take meal and/or rest periods and/or
3 worked during meal and/or rest periods.

4 67. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
5 policies and/or practices of impeding Plaintiff and truck workers, industrial truck
6 workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or
7 other similar job designations and titles who are/were paid on a piece-rate basis from
8 taking meal and/or rest periods.

9 68. As a result of said uniform policies and/or practices of impeding Plaintiff and truck
10 workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
11 industrial workers, and/or other similar job designations and titles who are/were paid on a
12 piece-rate basis from taking rest periods, Plaintiff and truck workers, industrial truck
13 workers, industrial truck drivers, industrial vehicle drivers, industrial workers, and/or
14 other similar job designations and titles did not take meal and/or rest periods and/or
15 worked during meal and/or rest periods.

16 69. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
17 policies and/or practices of not satisfying its obligation to authorize and permit paid rest
18 periods and/or provide meal periods to its employees, including truck workers, industrial
19 truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers,
20 and/or other similar job designations and titles who are/were paid on a piece-rate basis.

21 70. As a result of said uniform policies and/or practices Defendant and/or DOES had of not
22 satisfying its obligations to authorize and/or permit rest periods, Plaintiff and said truck
23 workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
24 industrial workers, and/or other similar job designations and titles regularly either did not
25 receive meal and/or rest periods and/or worked during meal and/or rest periods.

26 71. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
27 policies and/or practices resulted in said employees not being provided with accurate and
28

1 itemized wage statements.

2 72. As a result of MCLANE SUNEAST, INC. and/or DOES' uniform policies and/or
3 practices of not providing employees with accurate and itemized wage statements,
4 Plaintiff and said truck workers, industrial truck workers, industrial truck drivers,
5 industrial vehicle drivers, industrial workers, and/or other similar job designations and
6 titles who are/were paid on a piece-rate basis were not provided with accurate and
7 itemized wage statements. Thus, Plaintiff and truck workers, industrial truck workers,
8 industrial truck drivers, industrial vehicle drivers, industrial workers, and/or other similar
9 job designations and titles who are/were paid on a piece-rate basis are owed appropriate
10 penalties.

11 73. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had uniform
12 policies and/or practices that resulted in employees not being timely paid all wages owed
13 to them at the time they left MCLANE SUNEAST, INC. and/or DOES' employ, or were
14 terminated.

15 74. As a result of MCLANE SUNEAST, INC. and/or DOES' uniform policies and/or
16 practices of not paying all wages owed at the time of termination, Plaintiff and truck
17 workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers,
18 industrial workers, and/or other similar job designations and titles were not paid the
19 wages owed to them in a timely manner when they left MCLANE SUNEAST, INC.
20 and/or DOES' employ or were terminated. Thus, Plaintiff and truck workers, industrial
21 truck workers, industrial truck drivers, industrial vehicle drivers, industrial workers,
22 and/or other similar job designations and titles that left MCLANE SUNEAST, INC.
23 and/or DOES' employ or were terminated during the statutory period are owed waiting
24 time penalties.

25
26 **D. Adequacy of Representation.**

27 75. Plaintiff will fairly and adequately represent and protect the interests of the members of
28 the Class.

1 76. Plaintiff is ready and willing to take the time necessary to help prosecute this case.

2 77. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and
3 protect the interests of the members of the class.

4 78. Counsel who represents Plaintiff is competent and experienced in litigating large
5 employment class actions.

6 79. Specifically, William Turley, Esq. and David Mara, Esq. are California lawyers in good
7 standing.

8 80. Mr. Turley regularly lectures lawyers on wage and hour class action issues. He has been a
9 featured speaker on many ACI Wage and Hour Class Action presentations and Consumer
10 Attorney of California Wage and Hour Class Action presentations.

11 81. Mr. Turley is listed as Amicus counsel on over 20 California Supreme Court decisions.

12 82. Mr. Turley is a Past President of Consumer Attorneys of San Diego and has been elected
13 to the Board of Governors of the Consumer Attorneys of California for over 15 years.
14 Mr. Turley is currently on and has been a member of the Consumer Attorneys of
15 California Amicus Curie Committee for over 20 years.

16 83. Mr. Turley has had over 100 legal articles published, including some on California Labor
17 Code.

18 84. Mr. Turley and Mr. Mara were appointed class counsel in the landmark California
19 Supreme Court case, *Brinker v. Superior Court* and have been appointed as class counsel
20 in many California wage and hour cases, in both State Court and Federal Court.

21 85. Mr. Turley and The Turley & Mara Law Firm, APLC have the resources to take this case
22 to trial and judgment, if necessary.

23 86. Mr. Turley and Mr. Mara have the experience, ability, and ways and means to vigorously
24 prosecute this case.

25
26 **E. Superiority of Class Action.**

27 87. A class action is superior to other available means for the fair and efficient adjudication
28 of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to the Class predominate over any questions affecting
2 only individual members of the Class. Each member of the Class has been damaged and
3 is entitled to recovery by reason of MCLANE SUNEAST, INC. and/or DOES' illegal
4 policies and/or practices of failing to pay all straight time and overtime wages owed,
5 failing to permit or authorize rest periods, failing to provide meal periods, knowingly and
6 intentionally failing to comply with wage statement requirements, and failing to pay all
7 wages due at termination.

8 88. Class action treatment will allow those similarly situated persons to litigate their claims
9 in the manner that is most efficient and economical for the parties and the judicial system.
10 Plaintiff is unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 89. Because such common questions predominate over any individualized issues and/or
13 questions affecting only individual members, class resolution is superior to other methods
14 for fair and efficient adjudication.

15
16 **IV. CAUSES OF ACTION**

17 **First Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure to**
18 **Pay All Straight Time Wages**

19 90. Plaintiff and those similarly situated Class members hereby incorporate by reference each
20 and every other paragraph in this Complaint herein as if fully plead.

21 91. Plaintiff and those similarly situated Class members are and were long haul drivers for
22 Defendant who drove long haul routes and were paid on a piece-rate basis.

23 92. Defendant's piece-rate compensation scheme initially compensated Plaintiff and those
24 similarly situated Class members by paying them by the mile driven, then Defendant
25 changed its piece-rate compensation scheme to compensate Plaintiff and those similarly
26 situated Class members by the mile, by the load and by the stop.

27 93. Defendant's initial piece-rate pay structure paid its drivers on a per mile basis which
28 means Plaintiff and those similarly situated Class members were only paid while the

1 wheels were moving.

2 94. Defendant's amended piece-rate pay structure paid its drivers on a per mile basis, and for
3 the drivers' load(s) and stop(s).

4 95. Defendant's initial and amended piece-rate pay structure does not comply with California
5 law, as it does not separately and directly pay for non-driving tasks and all work
6 performed such as waiting time, time on-call, time on standby, pre and post trips, fueling,
7 or waiting at weigh stations or inspections, time spent filling out paperwork, answering
8 phones, breakdown pay, layovers, waiting for drop and hooks to be completed, washing
9 trailers, routing and re-routing routes that are different from the dispatched routes.

10 96. Defendant's piece-rate pay structure also does not comply with California law because it
11 does not compensate drivers for actual miles driven. It, instead, pays for the "dispatched
12 miles." That is, the amount of miles between points "A" and "B" as routed by the
13 company. If the driver deviates from the dispatched route miles to avoid traffic,
14 accidents, weather, hazards, detours, roads with truck restrictions, etc., the driver does not
15 get paid for that.

16 97. Defendant's piece-rate pay structure also does not comply with California law because it
17 does not compensate drivers for time spent on-call.

18 98. Defendant requires its drivers to be on-call if they do not satisfy Defendant's minimum
19 route requirements or are needed to fill in for a driver who is on vacation or sick.

20 99. Per Defendant's policies and practices, if a driver is on-call and receives a route
21 assignment he or she must call Defendant back within the hour and accept the
22 assignment.

23 100. Drivers are required to be available via their personal cellular phones day and night if on-
24 call.

25 101. If a driver refuses a call, does not accept a route assignment, or does not timely return a
26 call while on-call he or she could be terminated by Defendant.

27 102. Under California law, the time Defendant's drivers spend on-call is compensable.
28

- 1 103. Defendant does not compensate its drivers for their time spent on-call.
- 2 104. Defendant's piece-rate pay structure also does not provide for separate compensation for
- 3 rest periods as required by California law.
- 4 105. By their policy of not separately paying compensation for all time worked, including, but
- 5 not limited to time spent on-call, pre-trips, post-trips, waiting time, time between runs,
- 6 phone time, paper work, drop and hook, washing truck trailers, and scheduling time to
- 7 Plaintiff and the proposed Class of Non-Exempt Employees, Defendant violated the
- 8 provisions of Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B), *Lab. Code*
- 9 sections 200, 221, 222, and 223.
- 10 106. By their policy of not separately paying compensation for all miles driven, per
- 11 Defendant's piece-rate pay plan, to Plaintiff and the proposed Class of Non-Exempt
- 12 Employees, Defendant violated the provisions of Cal. Code Regs., tit. 8, section 11090,
- 13 subds. 1 and 4(B), *Lab. Code* sections 200, 221, 222, and 223.
- 14 107. Defendant claims that they pay their Non-Exempt Employees for all miles driven, but
- 15 Defendant does not pay their Non-Exempt Employees for all miles driven.
- 16 108. By their policy of not paying compensation for all miles driven, Defendant and/or DOES
- 17 misrepresent their piece-rate pay scheme to Non-Exempt Employees, who are not paid
- 18 for all miles actually driven. Defendant and/or DOES misrepresent to Non-Exempt
- 19 Employees that Defendant and/or DOES pay per mile, but actually do not pay per mile
- 20 driven.
- 21 109. By their policy of not providing paid rest breaks at the rate of ten (10) minutes net rest
- 22 time per four (4) hours or major fraction thereof, Defendant violated the provisions of
- 23 Cal. Code Regs., tit. 8, section 11090, subd. 12(A).
- 24 110. As a direct result of the unlawful acts of MCLANE SUNEAST, INC. and/or DOES
- 25 Plaintiff and the Class he intends to represent have been deprived of wages in amounts to
- 26 be determined at trial, and are entitled to recovery of such amounts, plus interest thereon,
- 27 attorneys' fees, and costs, pursuant to the provisions Cal. Code Regs., tit. 8, section
- 28

11090, subds. 1 and 4(B) and 12(A), *Lab. Code* sections 200, 221, 222, and 223.

111. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described below.

Second Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure to Pay Overtime

112. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

113. It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages. *Labor Code* section 222 prohibits the withholding of part of a wage. *Labor Code* section 223 prohibits the pay of less than a statutory or contractual wage scale. *Labor Code* section 1197 prohibits the payment of less than the minimum wage. *Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

114. MCLANE SUNEAST, INC. and/or DOES failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

115. Plaintiff and those similarly situated Class members were routinely scheduled to work over eight (8) hours per day and forty (40) hours per week.

116. Plaintiff and those similarly situated Class members were scheduled to work a minimum of seventy (70) hours per week, each week they were employed by Defendant, and would often exceed that amount due to their time spent on-call and on on-call assignments.

117. Plaintiff and those similarly situated Class members were not compensated by Defendant for their time spent on-call.

118. Apart from completing their scheduled routes, which were compensated on a piece-rate

1 basis, Plaintiff and those similarly situated Class members performed uncompensated,
2 non-driving tasks for Defendant before, during and after their scheduled routes and
3 performed uncompensated work during their auto-deducted thirty (30) minute meal
4 periods causing them to work over eight (8) hours in a day and forty (40) hours in a
5 week.

6 119. Plaintiff and those similarly situated Class members were employed by MCLANE
7 SUNEAST, INC and/or DOES at all relevant times. MCLANE SUNEAST, INC and/or
8 DOES were required to compensate Plaintiff for all hours worked and were prohibited
9 from making deductions that had the effect of reducing the agreed upon wage.

10 120. Plaintiff and those similarly situated Class members are informed and believe and thereon
11 allege that MCLANE SUNEAST, INC. and/or DOES breached the legal duty to pay full
12 wages to Plaintiff by automatically deducting a portion of the wages earned when
13 Plaintiff and the Class Members' actual time records indicated that a meal period was
14 not taken. MCLANE SUNEAST, INC. and/or DOES devised a computer program to edit
15 the actual hours reported by Plaintiff and the Class Members, deducting a portion of the
16 hours shown as worked hours when a meal period and/or rest period was not taken during
17 the work day. MCLANE SUNEAST, INC. and/or DOES did not make reasonable efforts
18 to determine whether the time deducted was actually worked as reported by Plaintiff and
19 the Class Members. MCLANE SUNEAST, INC. and/or DOES, without a reasonable
20 basis, presumed that actual reported hours had not been accurately reported. The conduct
21 complained of is a form of what is sometimes called "dinging" and is prohibited by law.
22 MCLANE SUNEAST, INC. and/or DOES also failed to pay for the overtime that was
23 due, pursuant to IWC Wage Order No. 9-2001, item 3(A).

24
25 121. Plaintiff and the Class Members are informed and believe and thereon allege that as a
26 direct result of the systematic deductions in pay, resulting from application of an
27 automatic computer program and overtime, Plaintiff and the Class Members have
28 suffered, and continue to suffer, substantial unpaid wages, and lost interest on such

1 wages, and expenses and attorneys' fees in seeking to compel MCLANE SUNEAST,
2 INC. and/or DOES to fully perform their obligations under state law, all to their
3 respective damage in amounts according to proof at time of trial. MCLANE SUNEAST,
4 INC. and/or DOES committed the acts alleged herein knowingly and willfully, with the
5 wrongful and deliberate intention on injuring Plaintiff and the Class Members. MCLANE
6 SUNEAST, INC. and/or DOES acted with malice or in conscious disregard of Plaintiff
7 and the Class Member's rights. In addition to compensation, Plaintiff is also entitled to
8 any penalties allowed by law.

9 122. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described
10 below.

11
12 **Third Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure**
13 **to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7,**
14 **512, IWC Wage Order Nos. 9-1998, 9-2000, 9-2001(11); Cal. Code Regs., tit. 8, §**
15 **11090)**

16 123. Plaintiff and those similarly situated Class members hereby incorporate by reference each
17 and every other paragraph in this Complaint herein as if fully plead.

18 124. Under *California Labor Code* section 512 and IWC Wage Order No. 9, no employer shall
19 employ any person for a work period of more than five (5) hours without providing a
20 meal period of not less than thirty (30) minutes. During this meal periods of not less than
21 thirty (30) minutes, the employee is to be completely free of the employer's control and
22 must not perform any work for the employer. If the employee does perform work for the
23 employer during the thirty (30) minute meal period, the employee has not been provided
24 a meal period in accordance with the law. Also, the employee is to be compensated for
25 any work performed during the thirty (30) minute meal period.

26 125. In addition, an employer may not employ an employee for a work period of more than ten
27 (10) hours per day without providing the employee with another meal period of less than
28 thirty (30) minutes.

126. Under *California Labor Code* section 226.7, if the employer does not provide an

1 employee a meal period in accordance with the above requirements, the employer shall
2 pay the employee one (1) hour of pay at the employee's regular rate of compensation for
3 each workday that the meal period is not provided.

4 127. MCLANE SUNEAST, INC. and/or DOES failed to provide thirty (30) minute,
5 uninterrupted meal periods to its Non-Exempt Employees who worked for work periods
6 of more than five (5) consecutive hours. As such, MCLANE SUNEAST, INC. and/or
7 DOES' Non-Exempt Employees were required to work well over five (5) consecutive
8 hours at a time without being provided a thirty (30) minute uninterrupted meal period
9 within that time.

10 128. MCLANE SUNEAST, INC. and/or DOES failed to provide thirty (30) minute,
11 uninterrupted meal periods to its Non-Exempt Employees for every five (5) continuous
12 hours worked.

13 129. Plaintiff and those similarly situated Class members were not provided with reasonable
14 opportunities to take timely, uninterrupted, duty-free thirty (30) minute meal periods
15 during their shifts and while driving their routes due to Defendant's restrictive scheduling
16 of customer deliveries and its strict route completion policies and requirements.

17 130. Plaintiff and those similarly situated Class members drove long hauls for Defendant
18 along a large stretch of California ranging from Los Angeles to the Oregon border.

19 131. At the beginning of each shift Plaintiff and those similarly situated Class members would
20 receive route packets detailing the specific route they were to be driving that shift, each
21 delivery they were scheduled to make, and the delivery window for each scheduled
22 delivery that Defendant had communicated to its customers.

23 132. Each shift, Plaintiff and those similarly situated Class members had around twenty (20)
24 deliveries to make along a pre-set route.

25 133. The delivery windows Defendant scheduled for each of its customers along its drivers'
26 routes allowed only enough time for Plaintiff and those similarly situated Class members
27 to drive their route to a customer for delivery, make the delivery, and continue straight on
28

- 1 to the next customer in order to make timely deliveries.
- 2 134. Defendant did not allot time in Plaintiff and those similarly situated Class members'
- 3 delivery routes and schedules for off-duty, uninterrupted meal and rest periods.
- 4 135. Defendant did not schedule timely, off-duty, uninterrupted meal and rest periods for
- 5 Plaintiff and those similarly situated Class members within their routes and delivery
- 6 schedules.
- 7 136. The amount of deliveries Plaintiff and those similarly situated Class members were
- 8 scheduled to complete in an assigned route and the delivery window provided for each
- 9 delivery prevented Plaintiff and putative class members from breaking their routes to take
- 10 uninterrupted, off-duty meal and rest periods during their scheduled shifts.
- 11 137. Defendant had a policy and practice of creating incentives for its drivers to forgo legally
- 12 protected meal and rest breaks.
- 13 138. Defendant would incur monetary penalties from its customers if its drivers did not
- 14 complete deliveries on-time and within the set delivery windows.
- 15 139. Plaintiff and those similarly situated Class members were warned by Defendant's driver
- 16 supervisors not to incur these monetary penalties.
- 17 140. Defendant would hold monthly driver meetings in which its driver supervisors stressed
- 18 that the company's profit margin was very small and the speed and efficiency with which
- 19 Plaintiff and those similarly situated Class members could complete their deliveries and
- 20 routes contributed to maintaining Defendant's profit margin.
- 21 141. Defendant's driver supervisors were under immense pressure to maintain Defendant's
- 22 bottom-line by having its drivers complete their routes and deliveries in the most time-
- 23 efficient way possible.
- 24 142. Defendant would call or text Plaintiff and those similarly situated Class members on
- 25 Plaintiff and those similarly situated Class members' personal cellular phones during
- 26 routes to check-in on them and ensure they were making on-time deliveries.
- 27 143. Defendant kept track of Plaintiff and those similarly situated Class members' "On-Time
- 28

- 1 Delivery Percentages” which would be discussed at its monthly driver meetings.
- 2 144. Maintaining a high “On-Time Delivery Percentage” would result in Plaintiff and those
- 3 similarly situated Class members receiving bonuses while failing to maintain a high “On-
- 4 Time Delivery Percentage” resulted in Plaintiff and those similarly situated Class
- 5 members not receiving bonuses.
- 6 145. Falling below Defendant’s target “On-Time Delivery Percentage” could also result in in
- 7 Plaintiff and those similarly situated Class receiving disciplinary write-ups.
- 8 146. Failure to meet scheduled delivery windows, incurring monetary penalties from
- 9 Defendant’s customers, or inefficient route completion could result in Plaintiff and those
- 10 similarly situated Class members receiving disciplinary write-ups from Defendant’s
- 11 supervisors, not receiving bonuses, or losing the ability to bid on enough routes to meet
- 12 Defendant’s minimum route requirements.
- 13 147. The quick succession and volume of scheduled deliveries that had to be completed in a
- 14 given shift did not provide a reasonable opportunity for Plaintiff and those similarly
- 15 situated Class members to break route and exercise their rights to take off-duty meal and
- 16 rest periods without running afoul of the delivery windows provided to Defendant’s
- 17 customers or going over the maximum drive time.
- 18 148. Defendant scheduled Plaintiff and those similarly situated Class members’ deliveries and
- 19 delivery routes so tightly that by stopping to take timely, uninterrupted, off-duty meal and
- 20 rest periods, Plaintiff and those similarly situated Class members ran the risk of going
- 21 over the maximum drive time allowed per route and week under Defendant’s policies.
- 22 149. Thus, Plaintiff and those similarly situated Class members were required to work through
- 23 their meal and rest periods each shift to make their scheduled deliveries within their
- 24 respective delivery windows, stay within the maximum drive time allowed by Defendant,
- 25 and complete their routes as efficiently as possible.
- 26 150. MCLANE SUNEAST, INC. and/or DOES’ business model was such that Non-Exempt
- 27 Employees were assigned too much work that could not reasonably be completed in their
- 28

1 assigned shift, work, and/or route, resulting in Non-Exempt Employees routinely and
2 regularly being forced to eat their meals while driving and/or while working their routes.

3 151. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had a pattern
4 and practice of assigning too much work to be completed in too short of time frames,
5 resulting in Plaintiff and those similarly situated not breaking route to take meal periods.

6 152. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had a pattern
7 and practice of scheduling routes and assigning too much work to be completed in too
8 short of time frames, resulting in MCLANE SUNEAST, INC. /or DOES pressuring Non-
9 Exempt Employees to complete their routes and/or tasks within the rigorous time frames
10 and not take meal breaks.

11 153. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had a pattern
12 and practice of scheduling routes and assigning too much work to be completed in too
13 short of time frames, resulting in MCLANE SUNEAST, INC. and/or DOES discouraging
14 Non-Exempt Employees from taking meal periods.

15 154. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had a
16 pattern and practice of scheduling routes and assigning too much work to be completed in
17 too short of time frames, resulting in MCLANE SUNEAST, INC. and/or DOES
18 impeding Non-Exempt Employees from taking meal periods.

19 155. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES valued
20 productivity over providing meal periods and, because of this, meal breaks were not
21 priorities to MCLANE SUNEAST, INC. and/or DOES.

22 156. Because of MCLANE SUNEAST, INC. and/or DOES' demanding policies on route
23 and/or completion times, Plaintiff and those similarly situated felt that breaking to
24 exercise their rights to take meal periods would sacrifice their jobs with MCLANE
25 SUNEAST, INC. and/or DOES.

26 157. Based on MCLANE SUNEAST, INC. and/or DOES' demanding route and/or task
27 completion time policies, Plaintiff and those similarly situated routinely worked through
28

1 their meal periods, which compromised the health and welfare of, not only Plaintiff and
2 those similarly situated, but all members of the general public.

3 158. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had no
4 policy that advised Plaintiff and those similarly situated of their right to take a second
5 meal period.

6 159. MCLANE SUNEAST, INC. and/or DOES thereby failed to provide an additional thirty
7 (30) minute uninterrupted meal period for Non-Exempt Employees on days where they
8 worked in excess of ten (10) hours.

9 160. Failing to provide compensation for such unprovided or improperly provided meal
10 periods, as alleged above, MCLANE SUNEAST, INC. and/or DOES willfully violated
11 the provisions of *Labor Code* sections 226.7, 512, and IWC Wage Order No. 9.

12 161. As a result of the unlawful acts of MCLANE SUNEAST, INC. and/or DOES, Plaintiff
13 and the Class they seek to represent have been deprived of premium wages, in amounts to
14 be determined at trial, and are entitled to recovery of such amounts, plus interest and
15 penalties thereon, attorneys' fees and costs, pursuant to *Labor Code* sections 226, 226.7,
16 and IWC Wage Order Nos. 9-1998, 9-2000, 9-2001. Plaintiff and the Class they seek to
17 represent did not willfully waive their right to take meal periods through mutual consent
18 with MCLANE SUNEAST, INC. and/or DOES.

19 162. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described
20 below.
21

22 **Fourth Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure**
23 **to Authorize and Permit Paid Rest Periods (Lab. Code § 226.7; IWC Wage Order**
Nos. 9-1998, 9-2000, 9-2001(12); Cal. Code Regs. Title 8 § 11090)

24 163. Plaintiff and those similarly situated Class members hereby incorporate by reference each
25 and every other paragraph in this Complaint herein, as if fully plead.

26 164. MCLANE SUNEAST, INC. and/or DOES failed to authorize and permit Non-Exempt
27 Employees to take ten (10) minute rest periods every four (4) hours worked, or major
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- 1 fraction thereof.
- 2 165. MCLANE SUNEAST, INC. and/or DOES failed to provide ten (10) minute paid rest
- 3 breaks to Non-Exempt Employees for each four (4) hours worked, or major fraction
- 4 thereof.
- 5 166. In failing to provide paid rest periods, Defendant violated Labor Code Section
- 6 226.2(a)(1), which mandates “Employees shall be compensated for rest and recovery
- 7 periods...”
- 8 167. Plaintiff and those similarly situated Class members were not provided with reasonable
- 9 opportunities to take timely, uninterrupted, duty-free ten (10) minute rest periods every
- 10 four (4) hours worked, or major fraction thereof during their shifts and while driving their
- 11 routes due to Defendant’s restrictive scheduling of customer deliveries along drivers’
- 12 routes and its strict route completion policies and requirements.
- 13 168. Plaintiff and those similarly situated Class members drove long hauls for Defendant
- 14 along a large stretch of California ranging from Los Angeles to the Oregon border.
- 15 169. At the beginning of each shift Plaintiff and those similarly situated Class members would
- 16 receive route packets detailing the specific route they were to be driving that shift, each
- 17 delivery they were scheduled to make, and the delivery window for each scheduled
- 18 delivery that Defendant had communicated to its customers.
- 19 170. Each shift, Plaintiff and those similarly situated Class members had around twenty (20)
- 20 deliveries to make along a pre-set route.
- 21 171. The delivery windows Defendant scheduled for each of its customers along its drivers’
- 22 routes allowed only enough time for Plaintiff and those similarly situated Class members
- 23 to drive their route to a customer for delivery, make the delivery, and continue straight on
- 24 to the next customer in order to make timely deliveries.
- 25 172. Defendant did not allot time in Plaintiff and those similarly situated Class members’
- 26 delivery routes and schedules for off-duty, uninterrupted meal and rest periods.
- 27 173. Defendant did not schedule off-duty, uninterrupted meal and rest periods for Plaintiff and
- 28

- 1 those similarly situated Class members within their routes and delivery schedules.
- 2 174. The amount of deliveries Plaintiff and those similarly situated Class members were
- 3 scheduled to complete in an assigned route and the delivery window provided for each
- 4 delivery prevented Plaintiff and putative class members from breaking their routes to take
- 5 uninterrupted, off-duty meal and rest periods during their scheduled shifts.
- 6 175. Defendant had a policy and practice of creating incentives for its drivers to forgo legally
- 7 protected meal and rest breaks.
- 8 176. Defendant would incur monetary penalties from its customers if its drivers did not
- 9 complete deliveries on-time and within the set delivery windows.
- 10 177. Plaintiff and those similarly situated Class members were warned by Defendant's driver
- 11 supervisors not to incur these monetary penalties.
- 12 178. Defendant would hold monthly driver meetings in which its driver supervisors stressed
- 13 that the company's profit margin was very small and the speed and efficiency with which
- 14 Plaintiff and those similarly situated Class members could complete their deliveries and
- 15 routes contributed to maintaining Defendant's profit margin.
- 16 179. Defendant's driver supervisors were under immense pressure to maintain Defendant's
- 17 bottom-line by having its drivers complete their routes and deliveries in the most time-
- 18 efficient way possible.
- 19 180. Defendant would call or text Plaintiff and those similarly situated Class members on
- 20 Plaintiff and those similarly situated Class members' personal cellular phones during
- 21 routes to check-in on them and ensure they were making on-time deliveries.
- 22 181. Defendant kept track of Plaintiff and those similarly situated Class members' "On-Time
- 23 Delivery Percentages" which would be discussed at its monthly driver meetings.
- 24 182. Maintaining a high "On-Time Delivery Percentage" would result in Plaintiff and those
- 25 similarly situated Class members receiving bonuses while failing to maintain a high "On-
- 26 Time Delivery Percentage" resulted in Plaintiff and those similarly situated Class
- 27 members not receiving bonuses.
- 28

1 183. Falling below Defendant's target "On-Time Delivery Percentage" could also result in in
2 Plaintiff and those similarly situated Class receiving disciplinary write-ups.

3 184. Failure to meet scheduled delivery windows, incurring monetary penalties from
4 Defendant's customers, or inefficient route completion could result in Plaintiff and those
5 similarly situated Class members receiving disciplinary write-ups from Defendant's
6 supervisors, not receiving bonuses, or losing the ability to bid on enough routes to meet
7 Defendant's minimum route requirements.

8 185. The quick succession and volume of scheduled deliveries that had to be completed in a
9 given shift did not provide a reasonable opportunity for Plaintiff and those similarly
10 situated Class members to break route and exercise their rights to take off-duty meal and
11 rest periods without running afoul of the delivery windows provided to Defendant's
12 customers or going over the maximum drive time.

13 186. Defendant scheduled Plaintiff and those similarly situated Class members' deliveries and
14 delivery routes so tightly that by stopping to take timely, uninterrupted, off-duty meal and
15 rest periods, Plaintiff and those similarly situated Class members ran the risk of going
16 over the maximum drive time allowed per route and week under Defendant's policies.

17 187. Thus, Plaintiff and those similarly situated Class members were required to work through
18 their meal and rest periods each shift to make their scheduled deliveries within their
19 respective delivery windows, stay within the maximum drive time allowed by Defendant,
20 and complete their routes as efficiently as possible. In the alternative, MCLANE
21 SUNEAST, INC. and/or DOES' business model was such that Non-Exempt Employees
22 were assigned too much work that could not be reasonably completed within their
23 assigned shift, work, and/or route, resulting in Non-Exempt Employees routinely and
24 regularly being forced to work through their rest periods.

25 188. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had a
26 pattern and practice of assigning too much work to be completed in too short of time
27 frames, resulting in Plaintiff and those similarly situated not breaking route to take rest
28

1 periods.

2 189. Because of MCLANE SUNEAST, INC. and/or DOES' demanding policies on route
3 and/or task completion times, Plaintiff and those similarly situated felt that breaking to
4 exercise their rights to take rest breaks would sacrifice their jobs with MCLANE
5 SUNEAST, INC. and/or DOES.

6 190. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES' uniform
7 policies and practices resulted in Non-Exempt Employees not receiving rest breaks.

8 191. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES valued
9 productivity over providing rest periods and, because of this, rest periods were not
10 priorities to MCLANE SUNEAST, INC. and/or DOES.

11 192. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES' policies
12 promoting productivity subjugated Plaintiff and those similarly situated's rights to rest
13 periods.

14 193. Based on MCLANE SUNEAST, INC. and/or DOES' demanding route policies, Plaintiff
15 and those similarly situated routinely worked through their rest periods, which
16 compromised the health and welfare of, not only Plaintiff and those similarly situated, but
17 all members of the general public.

18 194. Throughout the statutory period, MCLANE SUNEAST, INC. and/or DOES had no
19 policy that advised Plaintiff and those similarly situated of their rights to take an
20 additional rest periods in shifts exceeding ten (10) hours in a day.

21 195. Thus, Plaintiff and those similarly situated had no way of knowing they were to be
22 authorized and permitted a ten (10) minute rest period when working in excess of ten (10)
23 hours a day.

24 196. By its failure to authorize and permit Class Members to take rest periods for every four
25 (4) hours or major fraction thereof worked per day, MCLANE SUNEAST, INC. and/or
26 DOES willfully violated provisions of *Labor Code* section 226.7 and IWC Wage Order
27 Nos. 9-1998, 9-2000, and 9-2001. Plaintiff and the Class Members he seeks to represent
28

1 did not willfully waive their right to take rest periods through mutual consent with
2 MCLANE SUNEAST, INC. and/or DOES.

3 197. As a result of the unlawful acts of MCLANE SUNEAST, INC. and/or DOES, Plaintiff
4 and the Class they seek to represent have been deprived of premium wages in amounts to
5 be determined at trial, and are entitled to recovery of such amounts, plus interest and
6 penalties thereon, attorneys' fees and costs, under *Labor Code* sections 226, 226.7, and
7 IWC Wage Orders 9-1998, 9-2000, 9-2001.

8 198. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described
9 below.

10
11 **Fifth Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Knowing**
12 **and Intentional Failure to Comply with Itemized Employee Wage Statement**
13 **Provisions (Lab. Code §§ 226, 226.2 1174, 1175; IWC Wage Order No. 4; Cal. Code**
14 **Regs., Title 8, § 11040)**

15 199. Plaintiff and those similarly situated Class members hereby incorporate by reference each
16 and every other paragraph in this Complaint herein as if fully plead.

17 200. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES, at the time of
18 each payment of wages, "furnish each of his or her employees, either as a detachable part
19 of the check, draft, or voucher paying the employee's wages, or separately when wages
20 are paid by personal check or cash, an accurate itemized statement in writing showing (1)
21 gross wages earned, (2) total hours worked by the employee... (3) the number of piece-
22 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
23 basis, (4) all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
25 inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of his or her social security number or an employee
27 identification number other than the social security number, (8) the name and address of
28 the legal entity that is the employer...(9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate and the

1 corresponding number of hours worked at each hourly rate by the employee...”

2 201. Labor Code section 226, subdivision (a) also requires that “deductions made from
3 payment of wages shall be recorded in ink or other indelible form, properly dated,
4 showing the month, day, and year, and a copy of the statement and the record of the
5 deductions shall be kept on file by the employer for at least three years at the place of
6 employment or at a central location within the State of California.” to itemize in wage
7 statements and to accurately report the total hours worked and total wages earned.
8 MCLANE SUNEAST, INC. and/or DOES have knowingly and intentionally failed to
9 comply with *Labor Code* section 226, subdivision (a), on each and every wage statement
10 provided to Plaintiff SHENNADOAH MAXWELL and members of the proposed Class.

11 202. In every pay period during the period of the relevant statute of limitations, MCLANE
12 SUNEAST, INC. and/or DOES knowingly and intentionally did not itemize all
13 deductions from earned wages on wage statements as required by Labor Code section
14 226, subdivision (a). MCLANE SUNEAST, INC. and/or DOES had a uniform policy of
15 deducting 30-minutes each workday from Plaintiff and the class’ wages for meal periods,
16 despite the fact that Plaintiff and the class were working during and throughout the time
17 period of the deduction. MCLANE SUNEAST, INC. and/or DOES violated the Labor
18 Code section 226, subdivision (a) requirement of itemizing all deductions from wages. As
19 MCLANE SUNEAST, INC. and/or DOES knew or had reason to know Plaintiff and the
20 class were working during meal periods, MCLANE SUNEAST, INC. and/or DOES
21 knowingly and intentionally failed to comply with Labor Code Section 226, subdivision
22 (a).

23
24 203. MCLANE SUNEAST, INC. and/or DOES’ violation of Labor Code section 226,
25 subdivision (a) for knowingly and intentionally failing to itemize all deductions is not
26 derivative of Plaintiff’ cause of action pled herein for failure to provide meal periods. It is
27 a stand-alone, wholly independent claim, for failing to itemize all deductions from earned
28 wages on wage statements.

1 204. In every pay period during the period of the relevant statute of limitations, MCLANE
2 SUNEAST, INC. and/or DOES knowingly and intentionally did not itemize the total
3 hours worked on wage statements as Labor Code section 226, subsection (a), requires. In
4 every pay period during the period of the relevant statute of limitations, MCLANE
5 SUNEAST, INC. and/or DOES knowingly and intentionally did not include the time
6 worked during meal periods on wage statements, despite knowing that Plaintiff and the
7 class were working through meal periods. MCLANE SUNEAST, INC. and/or DOES
8 therefore knowingly and intentionally failed to itemize all hours worked on Plaintiff' and
9 the class' wage statements.

10 205. MCLANE SUNEAST, INC. and/or DOES' violation of Labor Code section 226,
11 subdivision (a) for knowingly and intentionally failing to itemize all hours worked on
12 wage statements is not derivative of Plaintiff' cause of action pled herein for failure to
13 provide meal periods. It is a stand-alone, wholly independent claim, for failing to itemize
14 all hours worked on wage statements.

15 206. In every pay period during the period of the relevant statute of limitations, MCLANE
16 SUNEAST, INC. and/or DOES knowingly and intentionally did not itemize the
17 beginning and ending date of the pay period on wage statements as Labor Code section
18 226, subsection (a), requires. MCLANE SUNEAST, INC. and/or DOES knew of – but
19 violated - their obligation to include this information on wage statements and knew
20 Plaintiff and the class needed that information to determine if they have been paid
21 correctly during the pay period. MCLANE SUNEAST, INC. and/or DOES therefore
22 knowingly and intentionally failed to itemize the beginning and ending of the pay periods
23 on Plaintiff' and the class' wage statements.

24 207. MCLANE SUNEAST, INC. and/or DOES' violation of Labor Code section 226,
25 subdivision (a) for knowingly and intentionally failing to itemize the beginning and
26 ending dates of the applicable pay periods on wage statements is not derivative of any of
27 Plaintiff' other causes of action pled herein or anywhere else. It is a stand-alone, wholly
28

1 independent claim, for failing to itemize the beginning and ending dates of applicable pay
2 periods on wage statements.

3 208. In every pay period during the period of the relevant statute of limitations, MCLANE
4 SUNEAST, INC. and/or DOES knowingly and intentionally did not itemize the
5 applicable rates of pay on wage statements as Labor Code section 226, subsection (a),
6 requires. MCLANE SUNEAST, INC. and/or DOES knew of – but violated - their
7 obligation to include this information on wage statements and knew Plaintiff and the
8 class needed that information to determine if they have been paid correctly during the pay
9 period. MCLANE SUNEAST, INC. and/or DOES therefore knowingly and intentionally
10 failed to itemize the applicable rates of pay on Plaintiff’ and the class’ wage statements.

11 209. MCLANE SUNEAST, INC. and/or DOES’ violation of Labor Code section 226,
12 subdivision (a) for knowingly and intentionally failing to itemize the applicable rates of
13 pay on wage statements is not derivative of any of Plaintiff’ other causes of action pled
14 herein or anywhere else. It is a stand-alone, wholly independent claim, for failing to
15 itemize the applicable rates of pay on wage statements.

16 210. In every pay period during the period of the relevant statute of limitations, MCLANE
17 SUNEAST, INC. and/or DOES knowingly and intentionally did not itemize the rates and
18 basis for how bonuses and other incentive pay were calculated on wage statements as
19 Labor Code section 226, subsection (a), requires. MCLANE SUNEAST, INC. and/or
20 DOES knew of – but violated - their obligation to include this information on wage
21 statements and knew Plaintiff and the class needed that information to determine if they
22 have been paid correctly during the pay period. MCLANE SUNEAST, INC. and/or
23 DOES therefore knowingly and intentionally failed to itemize the rates and basis for how
24 bonuses and other incentive pay were calculated on class’ wage statements.

25 211. MCLANE SUNEAST, INC. and/or DOES’ violation of Labor Code section 226,
26 subdivision (a) for knowingly and intentionally failing to itemize the rates and basis for
27 how bonuses and other incentive pay were calculated on wage statements is not
28

1 derivative of any of Plaintiff' other causes of action pled herein or anywhere else. It is a
2 stand-alone, wholly independent claim, for failing to itemize the rates and basis for how
3 bonuses and other incentive pay were calculated on wage statements.

4 212. In every pay period during the period of the relevant statute of limitations, MCLANE
5 SUNEAST, INC. and/or DOES knowingly and intentionally did not keep records of
6 deductions from wages in ink or other indelible form for at least three years as Labor
7 Code section 226, subsection (a), requires. MCLANE SUNEAST, INC. and/or DOES
8 knew of – but violated - their obligation to so keep these records. MCLANE SUNEAST,
9 INC. and/or DOES therefore knowingly and intentionally failed to keep accurate records
10 of deductions from Plaintiff' and the class' wages.

11 213. MCLANE SUNEAST, INC. and/or DOES' violation of Labor Code section 226,
12 subdivision (a) for knowingly and intentionally failing to keep records of deductions from
13 wages in ink or other indelible form for at least three years is not derivative of any of
14 Plaintiff' other causes of action pled herein or anywhere else. It is a stand-alone, wholly
15 independent claim, for failing to keep records of deductions from wages in ink or other
16 indelible form for at least three years.

17 214. Labor Code Section 226.2 also mandates that, for employees like Plaintiff and the
18 proposed class who are paid on a piece-rate basis, employers provide employees an
19 itemized wage statement each pay period that specifies "The total hours of compensable
20 rest and recovery periods, the rate of compensation, and the gross wages paid for those
21 periods during the pay period."

22 215. MCLANE SUNEAST, INC. and/or DOES failed to provide wage statements during the
23 relevant time period that itemized the total hours of compensable rest and recovery
24 periods, the rate of compensation, and the gross wages paid for those periods during the
25 pay period. As such, Plaintiff and members of the proposed class had no way of knowing
26 what they were paid for those periods.

27 216. Labor Code Section 226.2 further mandates that, for employees like Plaintiff and the
28

1 proposed class who are paid on a piece-rate basis, employers provide employees an
2 itemized wage statement each pay period that specifies “the total hours of other
3 nonproductive time... and the gross wages paid for that time during the pay period.”
4 Labor Code Section 226.2 defines “other nonproductive time” as “time under the
5 employer’s control, exclusive of rest and recovery periods, that is not directly related to
6 the activity being compensated on a piece-rate basis.”

7 217. MCLANE SUNEAST, INC. and/or DOES failed to provide wage statements during the
8 relevant time period that itemized the total hours of other nonproductive time and the
9 gross wages paid for that time during the pay period.” As such, Plaintiff and members of
10 the proposed class had no way of knowing what they were paid for those periods.

11 218. Thus, Plaintiff and those similarly situated Class members were unable to ascertain their
12 total hours worked, total piece-rate units earned, gross and net wages earned, and whether
13 they received all wages owed to them from the wage statements they received from
14 Defendant without being forced to perform mathematical computations to analyze
15 whether the wages paid in fact compensated them for all hours worked.

16 219. MCLANE SUNEAST, INC. and/or DOES’ violation of Labor Code section 226.2 is not
17 derivative of any other cause of action pled herein or anywhere else. It is a stand-alone,
18 wholly independent claim, for failing to itemize wage statements in accordance with
19 Labor Code section 226.2.

20 220. As a direct result of MCLANE SUNEAST, INC. and/or DOES’ unlawful acts, Plaintiff
21 and the class they intend to represent have been damaged and are entitled to recovery of
22 such amounts, plus interest thereon, attorneys’ fees, and costs, pursuant to *Labor Code*
23 section 226.

24 221. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described
25 below.

26
27 ///

Sixth Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure to Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)

222. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

223. Plaintiff SHENNADOAH MAXWELL terminated his employment with MCLANE SUNEAST, INC. and/or DOES.

224. Whether Plaintiff SHENNADOAH MAXWELL voluntarily or involuntarily terminated his employment with MCLANE SUNEAST, INC. and/or DOES, Defendant and/or DOES did not timely pay him straight time wages, overtime wages, meal period premiums, and/or rest period premiums, owed at the time of his termination.

225. Numerous members of the Class are no longer employed by MCLANE SUNEAST, INC. and/or DOES. They were either fired or quit MCLANE SUNEAST, INC. and/or DOES' employ. MCLANE SUNEAST, INC. and/or DOES did not pay all timely wages owed at the time of their termination.

226. *Labor Code* section 203 provides that, if an employer willfully fails to pay, without abatement or reduction, in accordance with *Labor Code* sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

227. MCLANE SUNEAST, INC. and/or DOES failed to pay Plaintiff SHENNADOAH MAXWELL a sum certain at the time of his termination or within seventy-two (72) hours of his resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *Labor Code* section 203, Plaintiff SHENNADOAH MAXWELL is entitled to a penalty in the amount of their daily wage, multiplied by thirty (30) days.

228. When Plaintiff and those members of the Class who are former employees of MCLANE SUNEAST, INC. and/or DOES separated from MCLANE SUNEAST, INC. and/or

DOES' employ, Defendant and/or DOES willfully failed to pay all straight time wages, overtime wages, meal period premiums, and/or rest period premiums owed at the time of termination.

229. MCLANE SUNEAST, INC. and/or DOES' failure to pay said wages to Plaintiff SHENNADOAH MAXWELL and members of the Class he seeks to represent was willful in that MCLANE SUNEAST, INC. and/or DOES knew the wages to be due, but failed to pay him.

230. As a consequence of MCLANE SUNEAST, INC. and/or DOES' willful conduct in not paying wages owed at the time of separation from employment, Plaintiff SHENNADOAH MAXWELL, and members of the proposed Class are entitled to thirty (30) days worth of wages as a penalty under *Labor Code* section 203, together with interest thereon and attorneys' fees and costs.

231. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described below.

Seventh Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 9; Cal. Code Regs., Title 8, § 11090)

232. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

233. An employer shall indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of the employees' duties, or the employees' obedience to the directions of the employer. Further, an employer shall not collect or receive from an employee any part of wages theretofore paid by employer to employee.

234. Defendant and/or DOES have had a continuous policy and/or practice of failing to reimburse and/or indemnify Plaintiff and the Class members for expenses for company and/or business related purposes.

235. Defendant and/or DOES have had a continuous policy and/or practice of failing to

- 1 reimburse and/or indemnify Plaintiff and the Class Members for expenses incurred as a
2 direct consequence of the discharge of their work duties.
- 3 236. Defendant and/or DOES have had a continuous policy and/or practice of failing to
4 reimburse and/or indemnify Plaintiff and the Class Members for expenses incurred in
5 direct consequence of employees' obedience to the directions of Defendant and/or DOES.
- 6 237. Defendant and/or DOES have had a continuous policy and/or practice of requiring
7 Plaintiff and those similarly situated Class members to be on-call if they have not
8 satisfied Defendant's minimum route requirements or are needed to fill in for a driver
9 who is on vacation or sick.
- 10 238. Per Defendant's policies and practices, if a driver is on-call and receives a route
11 assignment he or she must call Defendant back on his or her personal cellular phone
12 within the hour and accept the assignment.
- 13 239. Drivers are required to be available via their personal cellular phones day and night if on-
14 call.
- 15 240. If a driver refuses a call, does not accept a route assignment, or does not timely return a
16 call while on-call he or she could be terminated by Defendant.
- 17 241. Defendant and/or DOES have had a continuous policy and/or practice of not
18 compensating Plaintiff and those similarly situated Class members for use of their
19 personal cellular phones while on-call for Defendant.
- 20 242. Defendant and/or DOES have had a continuous policy and/or practice of requiring
21 Plaintiff and those similarly situated Class members to use their personal cellular phones
22 to communicate with Defendant while driving their routes and making their deliveries.
- 23 243. The only method of communication Defendant has with Plaintiff and those similarly
24 situated Class members while they are on their routes is through Plaintiff and those
25 similarly situated Class members' personal cellular phones.
- 26 244. Defendant and/or DOES have had a continuous policy and/or practice of not
27 compensating Plaintiff and those similarly situated Class members for use of Plaintiff and
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those similarly situated Class members' personal cellular phones to communicate with Defendant while driving their routes and making their deliveries.

245. Said continuous policy and/or practice of failing to reimburse Plaintiff and Class Members and deducting wages from employees is illegal under *Labor Code* sections 221, 2802, and Cal. Code Regs. Title 8, section 11090(8).

246. As a direct result of Defendant and/or DOES' policy of failing to reimburse Plaintiff and Class Members and deducting wages from employees, Plaintiff and those similarly situated have been damaged in an amount to be proven at trial.

247. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

Eighth Cause of Action Against MCLANE SUNEAST, INC. and/or DOES: Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)

248. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

249. MCLANE SUNEAST, INC. and/or DOES' failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, as alleged herein, constitutes unlawful activity prohibited by *California Business and Professions Code* section 17200, et seq.

250. The actions of MCLANE SUNEAST, INC. and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of *California Business and Professions Code* section 17200, et seq.

251. Plaintiff are entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as

members of the general public actually harmed and as a representative of all others subject to MCLANE SUNEAST, INC. and/or DOES' unlawful acts and practices.

252. As a result of their unlawful acts, MCLANE SUNEAST, INC. and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class they seek to represent. MCLANE SUNEAST, INC. and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to *Business and Professions Code* section 17203. Plaintiff is informed and believes, and thereon allege, that Defendant and/or DOES are unjustly enriched through their policy of not paying all wages owed to Plaintiff and members of the proposed class.

253. Plaintiff is informed and believes, and thereon allege, that Plaintiff and members of the proposed class are prejudiced by MCLANE SUNEAST, INC. and/or DOES' unfair trade practices.

254. As a direct and proximate result of the unfair business practices of MCLANE SUNEAST, INC. and/or DOES, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages and premium pay which have been unlawfully withheld from Plaintiff and members of the proposed Class as a result of the business acts and practices described herein and enjoining MCLANE SUNEAST, INC. and/or DOES from engaging in the practices described herein.

255. The illegal conduct alleged herein is continuing, and there is no indication that MCLANE SUNEAST, INC. and/or DOES will cease and desist from such activity in the future. Plaintiff allege that if MCLANE SUNEAST, INC. and/or DOES are not enjoined from the conduct set forth in this Complaint, they will continue the unlawful activity discussed herein.

256. Plaintiff further request that the Court issue a preliminary and permanent injunction prohibiting MCLANE SUNEAST, INC. and/or DOES from continuing to not pay

1 Plaintiff and the members of the proposed Class overtime wages as discussed herein.

2 257. WHEREFORE, Plaintiff and the Class they seek to represent request relief as described
3 below.

4 **V. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment as follows:

- 6 1. That the Court determine that this action may be maintained as a class action;
- 7 2. For compensatory damages, in an amount according to proof at trial, with interest
8 thereon;
- 9 3. For economic and/or special damages in an amount according to proof with
10 interest thereon;
- 11 4. For unpaid straight time and overtime wages in an amount according to proof at
12 trial, with interest thereon;
- 13 5. For compensation for all time worked;
- 14 6. For compensation for not being provided paid rest breaks;
- 15 7. For compensation for not being provided paid meal periods;
- 16 8. For damages and/or monies owed for failure to comply with itemized employee
17 wage statement provisions;
- 18 9. For all waiting time penalties owed;
- 19 10. For reimbursement of business expenses;
- 20 11. That Defendant be found to have engaged in unfair competition in violation of
21 sections 17200 et seq. of the *California Business and Professions Code*;
- 22 12. That Defendant be ordered and enjoined to make restitution to the Class due to
23 their unfair competition, including disgorgement of their wrongfully withheld
24 wages pursuant to *California Business and Professions Code* sections 17203 and
25 17204;
- 26 13. That an order of specific performance of all penalties owed be issued under
27 *Business and Professions Code* sections 17202;
28

14. That Defendant be enjoined from continuing the illegal course of conduct, alleged herein;
15. That Defendant further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the *California Business and Professions Code*;
16. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
17. For attorneys' fees;
18. For interest accrued to date;
19. For costs of suit and expenses incurred herein; and
20. For any such other and further relief as the Court deems just and proper.

Dated: May 15, 2017

THE TURLEY & MARA LAW FIRM, APLC

By /s/ William Turley

William Turley, Esq.

David Mara, Esq.

Jamie Serb, Esq.

Katharine McCall, Esq.

Representing Plaintiff SHENNADOAH

MAXWELL, on behalf of himself, all others

similarly situated, and on behalf of the general public.